

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT DORAN, MARIA BAEZ,
ALEXANDER SHAPOROV, and
BERNARD LINN,

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF
HEALTH OFFICE OF THE MEDICAID
INSPECTOR GENERAL, DENNIS ROSEN,
JAMES C. COX, DAN COYNE, ANNA
COSCHIGNANO, SHERRI TOMPKINS,
ROBERT BYRNES, RUSSELL S. RIZZO,
MATHEW CHIESA, CHRISTOPHER BEDELL,
and JOHN and JANE DOES 1-5
(said names being fictitious, the persons intended
being those who aided and abetted the unlawful
conduct of the named Defendants),

Defendants.

No. 15-cv-07217 (PKC) (SN)

**STIPULATION AND ORDER
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION IN
CONSOLIDATED CASE**

1. INTRODUCTION

Plaintiffs initiated this lawsuit (“*Doran I*”) on or around September 11, 2015. On or around May 15, 2020, Plaintiffs filed a lawsuit captioned as *Doran, et al. v. Office of Medicaid Inspector General, et al.*, Dkt. No. 20-cv-3754 (PKC) (“*Doran II*”). On November 11, 2020, the Honorable P. Kevin Castel, United States District Judge, consolidated *Doran I* and *Doran II* “for all purposes” and ordered Plaintiffs to file a complaint consolidating *Doran I* and *Doran II*. ECF No. 277. Thereafter, Plaintiffs filed the Third Amended & Consolidated Complaint.

On June 30, 2021, Plaintiffs served an Electronically Stored Information (“ESI”) protocol proposal on Defendants regarding the search of Defendants’ ESI for discovery concerning the *Doran II* claims. On July 28, 2021, Defendants served an ESI counterproposal on Plaintiffs, along with an initial hit report for certain proposed search terms. On July 29, 2021, Plaintiffs responded to Defendants’ ESI counterproposal. Between August 9, 2021 and August 23, 2021, Defendants shared multiple hit reports with Plaintiffs using different search

terms and time periods, and the parties met and conferred regarding the same. On August 24, 2021, the parties agreed on search terms, time period, and custodians for the search of Defendants' ESI.

This stipulation and order memorializes the agreement reached by the parties for the collection and production of Defendants' ESI in this case.

2. GENERAL TERMS

The parties agree that the term ESI covers e-mails and other documents available on the e-mail system of the New York State Office of the Medicaid Inspector General ("OMIG"). In addition, Defendants will search ESI from OMIG-issued laptops, desktops, and cell phones used by the individual Defendants. Defendants reserve the right to conduct manual searches on certain OMIG-issued laptops, desktops, and cell phones rather than applying search terms to the extent manual searches are more practicable.

Defendants reserve the right to produce and rely upon ESI that is relevant to the claims in the Third Amended & Consolidated Complaint or the defenses in the Answer, but is not within the search parameters agreed to by the parties herein.

3. SCOPE OF ESI DISCOVERY

Time Frame for ESI Discovery

The parties agree that discovery of ESI in this case will be limited to the time period from March 8, 2016 to May 15, 2020, although certain search terms will be applied to a more limited time period as set forth in Exhibit A attached hereto, unless the parties jointly agree to modify that timeframe. However, this time-frame does not limit Plaintiffs' ability to request discovery of specific documents, or any documents referenced during deposition testimony that happen to be in the form of ESI during the normal course as permitted under the Fed. R. Civ. P. and S.D.N.Y. Civil Local Rules.

Custodians for ESI Discovery

The parties agree that discovery of ESI in this case will be limited to the following custodians:

1. CHRISTOPHER MULHALL;
2. MICHAEL DRESSLER;

3. SEAN MAHONEY;
4. GABRIELLE ARES;
5. DENNIS ROSEN;
6. DAN COYNE;
7. ROBERT BYRNES;
8. GREGORY WARING;
9. GRETHE KVERNES; and
10. SHERRI TOMPKINS.

In addition, Defendants will search the OMIG email boxes of the following custodians:

11. ROBERT DORAN;
12. MARIA BAEZ;
13. ALEXANDER SHAPOROV; and
14. BERNARD LINN.

4. SEARCH TERMS

The parties agree that Defendants meet their obligations to respond to Plaintiffs' production requests for ESI by applying the search terms set forth in Exhibit A attached hereto unless the parties jointly agree to modify the search terms.

5. LIMITATIONS AND ALLOWANCES ON REQUESTING ADDITIONAL ESI

Nothing in this agreement limits Plaintiffs' ability to request specific additional documents, including specific emails, or any documents—including ESI—referenced during deposition testimony. However, Defendants' email review will be limited by the custodians, search terms, and time periods listed in Sections 3 and 4 of this Stipulation. Defendants will not collect and/or search email boxes of additional custodians, or re-collect and/or search email boxes of the custodians listed in Section 3 using any search parameters not already listed in Sections 3 and 4, absent a court order.

6. PRODUCTION FORMATS

Format

The parties agree that ESI shall be produced to the requesting party as text searchable PDFs for ESI that is electronically searchable. Each document will be produced as a separate PDF. Attachments to emails will be provided as separate PDFs and will be produced and assigned Bates Numbers sequentially after the email.

Metadata

The producing party will produce metadata for ESI in an excel or .csv spreadsheet.

De-Duplication and Email Threading

A party is only required to produce a single copy of a responsive document. Parties may vertically and globally/horizontally de-duplicate stand-alone documents or entire document families using hash value matching. ESI that is not an exact duplicate may not be removed. Paper documents shall not be eliminated as duplicates of responsive ESI. To the extent the parties de-duplicate stand-alone electronic documents against an e-mail attachment, the attachment to the e-mail must be the document that is produced.

In instances where several email documents exist in a common thread, only the most inclusive version of those conversations need be produced (these are referred to as “Inclusive” documents). The identification of Inclusive documents for production shall be done in a manner which ensures that all unique responsive content, both in email messages and their attachments, is produced at least once.

Defendants will use the functions available on Relativity to de-duplicate and thread emails and email conversations, and the parties agree that Defendants have no obligation to manually review potential duplicates to ensure that they were caught by Relativity’s de-duplication and threading functions.

Other Specific Production Agreements

The parties further agree as follows:

- a. Parties have no obligation to make non-text-searchable documents text-searchable (by OCR scanning, for example). However, to the extent documents already exist in text-searchable format independent of this litigation, or are converted to text-searchable format for use in this litigation (including for use by the producing party), then such documents will be produced in the same text-searchable format at no cost to the receiving party.

7. DOCUMENTS PROTECTED FROM DISCOVERY

Non-Waiver of Protection

The parties agree that Fed. R. Civ. P 26(b)(5)(B), F.R.E. 502(d) and the Confidentiality

Order and Rule 502(d) Order in the above-referenced action shall govern the return and use of ESI produced in discovery which is subject to a claim of privilege or of protection as trial preparation material and the determination of claims of privilege and/or protection regarding such ESI.

Privilege Logs

Unless the parties jointly agree to modify this requirement, a party that withholds ESI or documents on the grounds of attorney-client privilege and/or work product protection or any other applicable privilege shall provide a:

(a) listing of such ESI or documents in electronic spreadsheet format providing as much objective metadata as is reasonably available (e.g., document control number, date, author(s), recipient(s), file type, etc.; “objective metadata” does not include substantive content from, or a subjective description of the document or ESI being withheld) and an indication of the privilege and/or protection being asserted; and

(b) description by category of ESI and documents that the withholding party asserts are privileged or protected.

Written communications between a party and its trial counsel in the Office of the Attorney General in the course of litigation or in anticipation of litigation and the work product material created in the course of litigation or in anticipation of litigation in this action are not required to be included in a privilege log. This provision does not include written communications only between a party and OMIG in-house counsel, but does include communications among a party, OMIG in-house counsel, and trial counsel in the Office of the Attorney General.

The parties agree to meet and confer as necessary to address any undue burden related to this requirement.

8. MODIFICATION

The parties reserve the right to seek modification of the stipulation by application to the Court for good cause shown.

Dated: October 18, 2021
New York, New York

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So Ordered.

Date:

United States District Judge

EXHIBIT A

No.	Final Terms & Time Periods
	March 8, 2016 to May 15, 2020
1	(accounting or degree) w/20 (Bob or Doran)
2	(Affidavit or support or "summary judgment" or plaintiffs or resign* or leave* or quit* or terminat*) w/20 ("Inv. Henry" or "Investigator Henry" or "Glen Henry" or "Joseph henry")
3	(AMIG or DMIG) w/20 (Bob or Doran)
4	(Complain or lawsuit or discrimin* or retaliate or griev* or promot* or GOER or demote or terminate or fire) w/20 (Glendon or Griffith)
5	(Complain or lawsuit or discrimin* or retaliate or griev* or promot* or GOER or demote or terminate or fire) w/20 (Nigill or Johnson)
6	(Complain or lawsuit or discrimin* or retaliate or griev* or promot* or terminate or fire) w/20 (Anthony or Tony or Murphy)
7	(Discriminate or lawsuit or complaint or sue or suing or file or EEO or retaliate or retaliation or retaliated or griev* or GOER or whine*) w/20 (Bern* or Linn)
8	(Discriminate or lawsuit or sue or suing or EEO or retaliate or retaliation or retaliated or griev* or GOER or whine*) w/25 (Maria or Baez)
9	(Discriminate or lawsuit or sue or suing or EEO or retaliate or retaliation or retaliated or griev* or whine*) w/25 (Alex* or Shaporov)
10	(Discriminate or lawsuit or sue or suing or EEO or retaliate or retaliation or retaliated or griev* or whine*) w/25 (Robert or Doran)
11	(Evaluat* or "six-month certification" or unsatisfactory or satisfactory) w/25 (Maria or Baez)
12	(Hire or select or choose or recommend or named or appoint or promote or interview) w/25 (Bern* or Linn)
13	(Hire or select or choose or recommend or named or appoint or promote or interview) w/25 (Doran)
14	(Hire or select or choose or recommend or named or appoint or promote or interview) w/25 (Maria or Baez)
15	(Hire or select or choose or recommend or named or appoint or promote or interview) w/25 (Shaporov)
16	(Protest or rally) w/10 (omig or discrim* or retaliat*)
17	(Senator or Gustavo) w/3 Rivera
18	Kaja w/3 whitehouse
19	succession w/3 planning
20	Richard w/3 khavkine
21	("inspector general" w/25 Doran) or (IG w/25 Doran)
	January 1, 2018 to May 15, 2020
22	"Investigative Specialist 2" w/20 (Mildred or Alexa or Palermo)
23	("Investigative Specialist 2" or "manager of medicaid investigations" or "manager medicaid investigations" or mmi or "management specialist 3" or "MS-3" or "assistant Medicaid inspector general" or amig) w/30 (qualif* or MQ or MQs)
24	("Preferred qualifications" or "investigative experience" or "health care related field" or "surveillance/monitoring") w/30 (Stephanie or Paton)
25	(Hire or select or choose or recommend or named or appoint or promote or interview) w/20 (Eunice or Green)
26	(Hire or select or choose or recommend or named or appoint or promote or interview) w/30 (Mildred or Alexa or Palermo)
27	(Hire or select or choose or recommend or named or appoint or promote or interview) w/30 (Stephanie or Paton) AND NOT Kohli
28	(Hire or select or choose or recommend or named or appoint or promote or interview) w/20 (Vlad* or Polishnik)

29	(Lawsuit or sue or "summary judgment" or appeal or retaliate* or demote or terminate or fire) w/20 (Ferlande or Landie or Milord or Francois)
30	(resign* or quit* or terminat*) w/20 (Greg or Waring)
31	(Transfer or "restraining order" or discipline* or violence) w/20 (Sean or Mahoney)
32	(Violence or complain* or substantiate) w/20 (Mildred or Alexis or Palermo)
33	00010 AND ("assistant Medicaid inspector general" or amig)
34	33052 AND ("manager of medicaid investigations" or "manager medicaid investigations" or mmi or "M-3")
35	33108 AND ("management specialist 3" or "MS-3")
36	33306 AND ("Investigative Specialist 2" or "IS-2")
37	AMIG w/20 (Bern* or Linn)
38	AMIG w/20 (Stephanie or Paton)
39	"civil service list" w/40 (Vlad* or Polishnik)
	January 1, 2019 to May 15, 2020
40	("management specialist 3" OR "ms-3") w/30 (vacancy or "civil service" or list)
41	(resign* or quit* or terminat*) w/20 (Dan or Coyne)
42	(resign* or quit* or terminat*) w/20 (Dennis or Rosen)
	March 3, 2020 to May 15, 2020
43	(Ticket or windows or tint or traffic or Palisades or arrested or imperson*) w/20 (Alex* or Shaporov)